

REMARKS

Claims 1-24 are pending in the present application. Claims 1, 2, 6-8, 12-14 and 18 have been amended and claims 19-24 have been added. Claims 1, 7 and 13 are independent. The specification has been amended. Reconsideration of this application, as amended, is respectfully requested.

Objection to the Specification

The disclosure stands objected to because a priority claim based on a foreign application is included in the "CROSS-REFERENCE TO RELATED APPLICATIONS" section of the specification. While not conceding to the appropriateness of the Examiner's objection, in order to expedite the prosecution of the present application, the "CROSS-REFERENCE TO RELATED APPLICATIONS" section of the specification has been deleted. However, Applicants reserve the right to incorporate the contents of Japanese Application No. 2003-095109 into the present specification at a later date if it is so desired. As the Examiner will note, the Japanese Priority Document was incorporated into the specification of the present application at the filing date of the present application.

In view of the above amendments and remarks, Applicants respectfully submit that the Examiner's specification objection has been obviated. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

Objection to the Claims

Claims 1, 2, 6-8, 12-14 and 18 stand objected to for lacking antecedent basis. While note conceding to the appropriateness of the Examiner's objection, but merely to expedite prosecution, as the Examiner will note, the claims have been carefully reviewed and revised, taking into consideration the specific deficiencies pointed out by the Examiner. Applicants submit that claims 1, 2, 6-8, 12-14 and 18 are now in proper form. Accordingly, reconsideration and withdrawal of the Examiner's rejection are respectfully requested.

Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1, 7 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kawamata et al., USPN 6,250,076. Claims 2, 8 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawamata et al. in view of Takeuchi, USPN 4,860,538. Claims 3, 9 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawamata et al. in view of Takeuchi, and further in view of Chabry, USPN 5,595,062. Claims 4-6, 10-12 and 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawamata et al. in view of Takeuchi and Chabry, and further in view of Yamada et al., USPN 6,378,471. These rejections are respectfully traversed.

The present invention is directed to a motorcycle and an exhaust system for a motorcycle. Independent claim 1 is directed to the motorcycle and recites a combination of elements including "an exhaust control valve for adjusting a flow area in an exhaust pipe, which forms part of said rear end exhaust portion of said exhaust system, is disposed in said exhaust pipe."

Independent claim 7 of the present invention is directed to the exhaust system and recites a combination of elements including “an exhaust control valve for adjusting a flow area in said exhaust pipe, said exhaust control valve being disposed in said rear end exhaust portion of said exhaust pipe.”

Independent claim 13 of the present invention is directed to a motorcycle and recites a combination of elements including “an exhaust control valve for adjusting a flow area in said exhaust pipe, said exhaust control valve being disposed in said rear end exhaust portion of said exhaust pipe.”

With the above constructions according to the present invention, the exhaust control valve is disposed at a position where it is not likely to be influenced by the rear wheel and it is spaced far away from a supporting surface of the rear wheel. Therefore, the exhaust control valve can be disposed in a good environment, where a bad influence from the rear wheel and the supporting surface is less likely to have an effect on the operation of the exhaust control valve. Applicants respectfully submit that the references relied on by the Examiner fail to teach or suggest the present invention as recited in independent claims 1, 7 and 13.

In particular, referring to the Kawamata et al. reference, this reference discloses an exhaust secondary air valve 20, which the Examiner considers to be the exhaust control valve of the presently claimed invention. However, referring to column 3, lines 35-61 of Kawamata et al., it is clear that the exhaust secondary air valve 20 is located upstream from the exhaust ports of the engine. Specifically, the two secondary air feed pipes 25 have upstream ends connected to the two air outlet pipes 23 of the exhaust secondary air valve 20. The downstream ends of the secondary air feed pipes 25 are connected to ports 24 formed in the cylinder block 6b. Referring

specifically to column 3, lines 48-52 of Kawamata et al., the secondary air feed pipes 25 then extend through the cylinder block 6b to the cylinder head 6a. Finally, the secondary air feed pipes 25 communicate with exhaust ports that constitute part of the exhaust passage.

Since the exhaust secondary air valve 20 is located upstream from the exhaust ports of the engine, the exhaust secondary air valve 20 cannot be considered an exhaust control valve as in the presently claimed invention. The exhaust secondary air valve 20 is an “air” valve and not an exhaust valve as recited in the independent claims of the present invention. In order for a valve to be considered an exhaust control valve, it must be located in an exhaust pipe. Referring to column 3, lines 40-43 of Kawamata et al., the secondary air suction pipe 22 has an upstream end in communication with the air cleaner and a downstream end connected to an air inlet pipe 21 of the exhaust secondary air valve 20. In view of this, the exhaust secondary air valve 20 does not control the exhaust of the engine. The exhaust secondary air valve 20 controls the amount of clean air that is inserted into the exhaust system at the exhaust port. In view of this, the Kawamata et al. reference fails to anticipate the independent claims of the present invention.

Although Applicants believe that the independent claims define the present invention over the Kawamata et al. reference as originally filed, as the Examiner will note, the independent claims have been amended to further define the present invention over Kawamata et al. Independent claim 1 now recites that the exhaust control valve is located in the exhaust pipe “which forms part of said rear end exhaust portion of said exhaust system.” In addition, independent claims 7 and 13 recite that the exhaust control valve is disposed in “said rear end exhaust portion of said exhaust pipe.” Referring to FIG. 1 of Kawamata et al., the Examiner’s position that the rear end of the exhaust portion includes elements 10 and 25 of Kawamata et al.

is without basis. As can be clearly understood, the secondary air feed pipes 25 are located upstream from the exhaust port for the above-mentioned reasons. In addition, the exhaust pipes 10 are located upstream from the exhaust pipe 11 and the muffler 12. In view of this, the exhaust pipes 10 cannot be considered to be the "rear end exhaust portion" of the exhaust system. It is the exhaust pipe 11 and the muffler 12 that would be considered the rear end exhaust portion of the exhaust system as in the presently claimed invention. Since the Kawamata et al. reference fails to disclose a control valve in the exhaust pipe 11, Applicants respectfully submit that the Kawamata et al. reference fails to anticipate independent claim 1, 7 and 13 of the present invention.

With regard to dependent claims 2-6, 8-12 and 14-18, Applicants respectfully submit that these claims are allowable due to their respective dependence upon independent claims 1, 7 and 13 as well as due to the additional recitations in these claims.

With regard to the Takeuchi reference relied on by the Examiner, Applicants respectfully submit that the Examiner's rejection is improper for the above-mentioned reasons, as well as due to the fact that the Takeuchi reference discloses an exhaust control valve. As explained above, the Kawamata et al. reference discloses a secondary air control valve, not an exhaust control valve. Since the exhaust control valve of Takeuchi is completely unrelated to the secondary air control valve of Kawamata et al., Applicants submit that one having ordinary skill in the art would not look to Takeuchi for the solution to any problem in a secondary air control valve. In addition, there is no indication that controlling the secondary air control valve of Kawamata et al. would function in any way that is similar to the functioning of the exhaust control valve of

Takeuchi. In view of this, Applicants submit that the Examiner's reliance on Takeuchi is improper and should be withdrawn.

With regard to the Chabry and Yamada et al. references, while not commenting on the appropriateness of the Examiner's rejections, Applicants submit that these references fail to disclose an exhaust control valve located as recited in the independent claims of the present invention. Accordingly, these references fail to make up for the deficiencies of Kawamata et al. and Takeuchi.

In view of the above amendments and remarks, Applicants respectfully submit that claims 1-18 clearly define the present invention over the references relied on by the Examiner. Accordingly, reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. §§ 102 and 103 respectfully requested.

Additional Claims

Additional claims 19-24 have been added for the Examiner's consideration. Applicants submit that these claims are allowable, due to their respective dependence on independent claims 1, 7 and 13, as well as due to the additional recitations in these claims.

Favorable consideration and allowance of claims 19-24 are respectfully requested.

CONCLUSION

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but merely to show the state-of-the-art, no further comments are deemed necessary with respect thereto.

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Paul C. Lewis, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

Dated: September 21, 2005

Respectfully submitted,

By 

Paul C. Lewis

Registration No.: 43,368

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant